



COUNTY OF LOS ANGELES
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Syn. No. 12
9/10/02

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman
SUPERVISOR GLORIA MOLINA
SUPERVISOR YVONNE BRATHWAITE BURKE
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN 
County Counsel

RE: **Recovery of County's Rampart-Related Costs
from the City of Los Angeles**

By Board motion dated September 10, 2002, you asked this office to report on the possibility of recovering more than \$20 million in County costs related to the Los Angeles Police Department's Rampart scandal.

Because there is no statutory authority permitting recovery of these costs and because the City is statutorily immune from liability, it is our opinion that there is no legal basis for recovery.

The "Rampart" police misconduct scandal within the Los Angeles Police Department resulted in expenditures by the District Attorney to investigate and prosecute allegations of criminal misconduct by LAPD officers. The scandal also required the District Attorney, Public Defender, Alternate Public Defender, and private counsel paid by the County to examine convictions resulting from the testimony of LAPD officers suspected of misconduct. It further required these County officers and private counsel to either defend or prosecute petitions for habeas corpus alleging wrongful conviction and confinement.

The District Attorney's expenses in investigating and prosecuting potential criminal actions against errant LAPD officers are, by law, County

charges.¹ The expenses of the Public Defender, Alternate Public Defender, and private counsel employed to represent indigents are also paid by the County pursuant to statute.²

Public entities may sue in tort for damage to their property. But, in the absence of express legislative authority they may not sue to recover the costs of providing governmental services. The State's decision to provide tax-supported services is a legislative policy determination.³ The Legislature may, if it desires, enact legislation specifically permitting the recovery of public expenditures from tort-feasors. The Legislature has done this in the case of firefighting expenses⁴ and the cost of medical care provided by the County to parties injured by tort-feasors.⁵

In the absence of express legislative authority to recover the costs of providing prosecutorial services or indigent defense services from a tort-feasor, there is no authority to bring an action for recovery.

In addition to a lack of any statutory authority to recover these costs, the City and its employees are statutorily immune from liability. The alleged wrongful conduct leading to the expenditure of County funds consisted of false testimony in judicial proceedings by Los Angeles Police officers. All public employees acting within the scope of employment, as well as their employing public entities, are absolutely immune for wrongs resulting from the prosecution of judicial proceedings. This is true even where the public employee acts without probable cause and with malice.⁶ The County's expenses in representing

¹ Government Code § 29601.

² Government Code § 27706, et seq., Penal Code § 987.2, Los Angeles County Charter § 14, Los Angeles County Code §§ 2.04.020, 2.11.020.

³ *County of San Luis Obispo v. Abalone Alliance* (1986) 178 Cal.App.3d 848, 858-859, *City of Los Angeles v. Shpegel-Dimsey, Inc.* (1988) 198 Cal.App.3d 1009, 1018.

⁴ Health and Safety Code § 13009.

⁵ Government Code § 23004.1.

⁶ Government Code §§ 815.2(b), 821.6, and *Asgari v. City of Los Angeles* (1997) 15 Cal.4th 744, 752-760.

incarcerated indigents challenging Rampart-related convictions are the result of judicial proceedings initiated by City employees for which both the City and its employees are immune.

It is our opinion that the City of Los Angeles is not liable to the County for either the expenses incurred by the District Attorney or for the cost of defense lawyers to represent indigent criminal defendants challenging Rampart-related convictions.

LWP:GWT:jb

c: David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors